

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on February 1, 2001 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Rod Bitney, Vice Chairman (R)  
Rep. Gary Matthews, Vice Chairman (D)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Roy Brown (R)  
Rep. Nancy Fritz (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Dennis Himmelberger (R)  
Rep. Carol C. Juneau (D)  
Rep. Jim Keane (D)  
Rep. Rick Laible (R)  
Rep. Bob Lawson (R)  
Rep. John Musgrove (D)  
Rep. William Price (R)  
Rep. Allen Rome (R)  
Rep. Donald Steinbeisser (R)  
Rep. Brett Tramelli (D)  
Rep. James Whitaker (R)

**Members Excused:** Rep. Dave Gallik (D)

**Members Absent:** None.

**Staff Present:** Gordon Higgins, Legislative Branch  
Jane Nofsinger, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB417, HB422, HB426, HB437,  
1/29/2001  
Executive Action: HB382, HB385, HB394, HB417

**HEARING ON HB426**

**Sponsor:** REP. GARY FORRESTER, HD16,Billings

**Proponents:** Hal Aasen, NRC, Helena Home Inspection Business  
Chris Dorsi, Altamis Group, Helena

**Opponents:** None

**Opening Statement by Sponsor:**

REP. GARY FORRESTER, HD16, Billings, asked the legislators to pass this bill which would prohibit home inspectors from performing maintenance and repair work on residential property within one year of their inspection. The bill would also ask the Department of Commerce to adopt rules governing the standards of practice for home inspections. The bill also would have an immediate effective date and some minor changes through amendments offered by the Department of Commerce.

**Proponents' Testimony:**

Mr. Aasen said he operated a home inspection business in Helena and was president of the state home inspection organization. He said his members believed this bill will improve the trade for homeowners and inspectors. The bill will protect the customers from conflict of interest and provide consistent standards for home inspection across the state.

Mr. Dorsi , although he was currently not active. He said there is a need for standardization, and lack of standards have created havoc because the product cannot be relied upon. He estimated there are 40-60 home inspectors statewide. He added 20 other states have standards on the books and this act will tie Montana to national standards.

**Opponents' Testimony:** None

**Informational Witnesses:**

Peter Ohman, Department of Commerce, offered the committee an amendment to the bill. **EXHIBIT** (buh26a01)

**Questions from Committee Members and Responses:**

**REP. BITNEY** asked **REP. FORRESTER** to clarify the potential risk of conflict of interest he saw in the bill. **REP. BITNEY** said he had been in the real estate field for 20 years. In his experience, he had observed home inspectors to be very handy and capable. He noted, when they are able to come in and make a repair, they are probably the quickest and cheapest means of repair. **REP. BITNEY** said time is of the essence in real estate transactions and delay can often kill a deal. **Mr. Forrester** replied he had been in real estate construction for 35 years and he knew of no shortage of contractors to do work in the Billings area. He said the two, inspection and repair, should not be tied together, because the inspector should not have a financial interest in the inspection.

**REP. LAIBLE** asked **Mr. Assen** how many home inspectors there were in the state. **Mr. Assen** said from looking at the Yellow Pages he estimated there were 51 or 52 home inspectors, and his organization had 18 members. **REP. LAIBLE** asked who contracted for the inspection. **Mr. Assen** said it was mainly a service for the buyer and that the major requests are from buyers. He said he puts his brochures for home inspection in real estate offices. **REP. LAIBLE** asked if the inspection included a termite inspection. **Mr. Assen** said no but if signs of termite damage were seen, he recommended a termite inspection. **REP. LAIBLE** asked if, after the inspection, that was the end of the inspector's responsibility. **Mr. Assen** said it depends on the individual inspector and his company prohibits its inspectors from making recommendations of repair people.

**Closing by Sponsor:**

**REP. FORRESTER** said this bill goes a long way to correct the problems and would be a good addition to the 1999 bill.

**HEARING ON HB417**

**Sponsor:** **REP. WILLIAM PRICE, HD94, Lewistown**

**Proponents:** **Jan Van Riper, State Auditor's Office**

**Mark Nelson, self**

**Roger McGlenn, Independent Insurance Agents of Montana**  
**Al Pontrelli, Montanan Association of Insurance Agents**  
**and Financial Advisors**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. WILLIAM PRICE, HD94, Lewistown,** said this bill is a re-codification of insurance laws to create uniformity with the way other states license. This would bring Montana in compliance with the national act and permit Montana to use as a central registry the national register of the National Association of Insurance Providers. He told the committee that 29 states must pass the law on or before February 12, 2001.

**{Tape : 1; Side : B; Approx. Time Counter : 0}**

**Proponents' Testimony:**

**Ms. Van Riper** stated the bill was proposed at the request of the State Auditor. She said the bill will put into statute what the state already does in reciprocity with other states. She said when Montana residents want to be licensed in other states they will reciprocate. She said the bill also allows the state to do their part in the central registry capacity.

**EXHIBIT (buh26a02)**

She presented written testimony from Gregg Van Horssen.

**EXHIBIT (buh26a03)**

**Mr. Nelson** said this bill tries to get uniformity in insurance licensing and will keep the federal government from taking over.

**Mr. McGlenn** said he strongly supported the bill and thanked the auditor's office for bringing the bill. **Mr. McGlenn** noted he was licensed in six states even though he did not sell insurance. He said there is a tremendous difference in each state's cost which ranged from \$100-\$850.

**Mr. Pontrelli** , representing the 450 members of his organization, said he favored and supported the bill.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. PRICE** thanked the committee and urged them to pass the bill.

HEARING ON HB422

Sponsor: REP. ROD BITNEY, HD77, Kalispell

Proponents: Aimee Gramojuz, Burlington Northern  
Leo Berry, Montana Western Railroad  
Russ Ritter, Montana Rail Link  
Angela Janacaro, Montana Mining Assn.  
Don Allen,

Opponents: Zander Blewett, Railroaders & his client, Mr. Neumeyer  
Al Smith, Montana Trial Lawyers Assn.  
Brad Marceau, United Transportation Union

Opening Statement by Sponsor:

REP. ROD BITNEY, HD77, Kalispell, told the committee this act eliminated the liability of railroad corporations and mining companies for negligence of employees, repealed two sections and provided an immediate effective date. **EXHIBIT (buh26a04)**

Proponents' Testimony:

**Ms. Gramojuz** said the act referred to a 1895 law. She said by repealing the two sections, the legislative intent will be re-asserted. She noted the employee will still have a remedy through the Workmen's Compensation Act.

**Mr. Berry** said in November, 2000, the Montana Supreme Court had reached back a century to this law and misapplied it. These sections of the law predated Workmen's Compensation and FILA. He said the law only applies to mining or railroads. The court concluded, he said, the worker had another cause of action. HB422 says if a worker is wrongfully discharged or disciplined they can use the Wrongful Discharge Act or collective bargaining.

**Ms. Janacaro** and **Mr. Allen** supported the bill.

Opponents' Testimony:

**Mr. Blewitt** stated he was adamantly against the bill. He said the witnesses who testified as proponents for the railroad were wrong because even though the bill had been started in 1895, it had been re-enacted several times. He told about his client, Mr. Neumeyer, who had an accident with a crane resulting in an amputation. He made a FILA claim, the railroad refused to take him back twice. When he failed to report back to work after two years, he was fired.

**Mr. Smith** said repealing the bill will not impact Mr. Neumeyer but repealing these sections will be for those in the future who will have no remedy. He noted recent legislatures have not been receptive to adding worker protection. He asked the committee to not be receptive to taking away worker protection. He noted railroads and mines are two of the most dangerous industries. He said these industries are powerful and have control over what happens to the workers.

**Mr. Marceau** said the bill does not provide a remedy for personal injury and asked the committee to keep these protections for workers.

**Questions from Committee Members and Responses:**

**REP. LAIBLE** asked if railroad workers were not covered by Workers Compensation. **Mr. Blewitt** said they were not and their only recourse was to sue for negligence and show the railroad harmed the worker. He continued that the railroads say the worker was hurt by his or her own negligence.

**REP. GALLIK** asked **Mr. Blewitt** if in case of death of an employee if there is a right to heirs, and , if repealed, would it prevent recourse against train wrecks due to railroad error. **Mr. Berry** said that would be covered by the Transportation Act.

***{Tape : 2; Side : B; Approx. Time Counter : 0}***

**REP. PRICE** asked **Ms. Gramojuz** if a worker was injured during work on the railroad, what was the standard process in a claim or a suit. **Ms. Gramojuz** deferred to **Mr. Berry** who said the process is similar in that a claim is handled by a collective bargaining agreement.

**Closing by Sponsor:**

**REP. BITNEY** said the laws were intended for injuries and have been wrongfully applied to wrongful discharge. He noted Winslow was not fired for his injury, but was fired for failing to disclose his injury. The Supreme Court actually over-reached in their decision overturning the lower district court decision, he said. He called the bill a fairness issue and asked the committee to pass the bill.

**HEARING ON HB437**

**Sponsor:** HAL JACOBSEN, HD54, Helena

**Proponents:** Charles Val, International Union of Elevator  
Contractors

Gordon Mohland, self

Bill Beam, State of Montana

Rod Driver, self

Jacquelyn Lenmark, American Insurance Assn.

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. HAL JACOBSEN, HD54, Helena,** told the committee the bill required that elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts and stairway chairlifts be inspected regularly. Farms and ranches are exempted, he said. He told the committee the bill is self-funding.

**Proponents' Testimony:**

**Mr. Val** said elevators do not care if they haul freight or people. They are sophisticated and complex equipment and require maintenance, repair and proper management. He said there have been four deaths and three serious injuries during the 1990's in Montana. **EXHIBIT (buh26a05)** He said there are less than 50 elevator contractors in Montana. A similar bill had died in 1999 due to a misunderstanding of the funding. This bill, he pointed out, was self-funding.

**Mr. Mohland** stated he did service and repair work on elevators and dumbwaiters. He noted all deaths in Montana have occurred on uninspected elevators, and most were related to freight. He said many passenger elevators have been converted to freight elevators to eliminate code requirements. He said the task force on elevators saw no difference in freight and passenger elevators, and inspection should be required of each on an annual basis. He noted 47 states require inspection. Montana code only calls for inspecting passenger elevators in public places. He did note that the State of Montana did inspect their own freight and dumbwaiters.

**Mr. Beam** said he had worked for Otis Elevator for 35 years and for 7 years had inspected elevators with the State of Montana. The freight and dumbwaiters should not be exempted from the inspection, he said.

**{Tape : 3; Side : A; Approx. Time Counter : 0}**

**Mr. Driver** said extending the freight and dumbwaiter inspection to the rest of Montana would give the rest of the state that which the State of Montana already recognizes a need for.

**Ms. Lenmark** said she was also speaking for **Jon Metropoulos**. She noted if this bill was passed, it would enhance the safety of the individuals her company insures. She noted a reduction of losses would result in a reduction of premiums.

**Opponents' Testimony:** None

**Informational Testimony:** **Jim Brown, Department of Commerce**, said there is no fiscal impact yet, but it would require one FTE and one .5 FTE.

**Questions from Committee Members and Responses:**

**REP. MATTHEWS** asked how much an inspection fee would cost. **Mr. Brown** said the fee would be \$100 for elevators and \$70 for lifts.

**REP. HIMMELBERGER** asked about the process of bringing old buildings up to standard which included adding gates. He asked what the cost would be for that. **Mr. Val** replied, depending on the size, a gate would run about \$700 plus installation cost. Some features on older elevators are grandfathered in, he added.

**Closing by Sponsor:**

**REP. JACOBSEN** told the committee the vertical conveyance systems of Montana need a closer look, and HB437 will do that.

**EXECUTIVE ACTION ON HB417**

**Motion/Vote:** **REP. PRICE** moved that **HB417 DO PASS**. Motion carried unanimously.



**EXECUTIVE ACTION ON HB382**

**Motion:** REP. WHITAKER moved that HB382 DO PASS.

**Discussion:**

REP. LAIBLE said he thought it was unfair to place these extra costs on those who could least afford it.

REP. FRITZ said the fee was only \$7.50 per year, not per month.

REP. JUNEAU said she opposed the bill because it was too specific and was for a special interest group.

REP. BITNEY said he supported the bill because it prevented more restrictions and regulations being imposed on businessmen.

REP GALLIK said the matter should be left up to the local governments and not controlled by the state government. He said he was a landlord and did not want to be licensed but local government should be allowed to make the determination if licensing was necessary.

REP. LAIBLE said the bill still allows local control, however, the bill creates an income-producing tax which should be borne by the entire community rather than the rental community.

REP. FRITZ explained the background of the bill occurred in Missoula when neighborhood homes had been turned into housing for students. There was a concern the neighborhood had been degraded. The city imposed a rule that no more than two members of a household must be from a different family. There were also parking problems and trashed houses in this area, she said. She said maybe there is not such a problem in Helena, but there is one in Missoula. She clarified she was speaking against the bill.

**Vote:** Motion HB382 carried 11-8 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Matthews, Musgrove, and Tramelli voting no.

*{Tape : 3; Side : B; Approx. Time Counter : 0}*

**EXECUTIVE ACTION ON HB385**

**Motion:** REP. PRICE moved that HB385 DO PASS.

**Discussion:**

REP. PRICE stated there was no reason for this bill.

**REP. BITNEY** said the bill only involved one isolated complaint.

**Substitute Motion/Vote:** **REP. MATTHEWS** made a substitute motion that **HB385 BE TABLED**. Substitute motion carried unanimously.

**EXECUTIVE ACTION ON HB394**

**Motion:** **REP. MATTHEWS** moved that **HB394 DO PASS**.

**Discussion:**

**REP. LAWSON** said he liked the bill because it gives accountability to government.

**REP. GALLIK** said he couldn't agree more with **REP. LAWSON**. He noted the committee had passed **REP. BROWN's bill** which required similar accountability of government.

**REP. BROWN** noted that if the committee wanted to send a message to business that they did not want more business in Montana, this bill would do that. He said all states offer money to attract businesses and they will locate where they can get money. Therefore, he would oppose the bill.

**REP. MUSGROVE** said the bill deals with development corporations and these are the lenders of last resort because of so many defaults.

**REP. PRICE** disagreed, saying development corporations are more often the avenue of first resort and have strict scrutiny. He did not, therefore, see the need for these regulations.

**REP. MATTHEWS** said he was very concerned about the smaller towns such as Miles City where he noted they had just hired a part-time economic developer. He said if they want to increase the tax base, why put more restrictions on it.

**REP. LAIBLE** agreed with **REP. MATTHEWS** saying the regulation of requiring the business to meet a public purpose other than that of increasing the tax base was the reason he was against the bill.

**REP. BITNEY** said it was hard enough attracting new business and that Montana did not need to add additional barriers.

**CHAIRMAN MCKENNEY** said he had worked hard to attract business through tax exemptions and state and local bonds. HB394 would send a negative message to business and therefore he opposed it.

**Vote:** Motion that **HB394 DO PASS failed 8-11 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Lawson, Musgrove, and Tramelli voting aye.**

**Motion/Vote:** REP. GALVIN-HALCRO moved that **HB394 BE TABLED.**

**Motion carried 11-8 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Lawson, Musgrove, and Tramelli voting no.**

**ADJOURNMENT**

Adjournment: 11:15 A.M.

---

REP. JOE MCKENNEY, Chairman

---

JANE NOFSINGER, Secretary

JM/JN

**EXHIBIT** (buh26aad)